

REMARKS

This is in response to the Office Action of July 26, 2004 in which claims 28-55 were rejected. Claims 1-27 were subject to a restriction. With this response, claims 28 and 35 are amended and claims 28-55 are presented for reconsideration and favorable action. Further, claims 1-27 and 31 are cancelled.

In the specification, the Examiner noted an error at page 13, line 4. That error has been corrected and the objection may be withdrawn.

In the Office Action, claims 28-31, 35-38 and 46-55 were rejected under 35 USC § 102 based upon Klang U.S. Patent No. 6,424,158. Claims 32-34 were rejected under 35 USC § 103 based upon Klang in view of Bertness U.S. Patent No. 6,361,914. Claim 39 was rejected under 35 USC § 103 based upon Klang in view of Skutch jr. U.S. Patent No. 4,360,786. Claim 40 was rejected under 35 USC § 103 based upon Klang in view of Kiernan et al U.S. Patent No. 4,723,656. Claim 41 was rejected under 35 USC § 103 based upon Klang in view of Cox U.S. Patent No. 5,432,025. Claim 42 was rejected based upon Klang in view of Theofanopoulos U.S. Patent No. 6,008,652. Claims 43 and 44 were rejected under 35 USC § 103 based upon Klang in view of Miyagawa. Finally, claim 45 was rejected under 35 USC § 103 based upon Klang in view of Guthrie U.S. Patent No. 5,707,015.

It is believed that pending claims 28-30 and 32-55 are patentable distinct from these references and the rejections should be withdrawn.

In the Office Action, it is the Klang reference that forms the basis of all rejections. In view of the amendments in claim 28, it is believed that the distinctions between the claim and the reference have been more clearly emphasized. Specifically, with the present invention an operator is queried regarding observable physical characteristics of the battery. As

discussed in the specification, such observable physical characteristics include, but are not limited to, the shape of the battery, writing on the battery, the location of components of the battery such as battery terminals, the presence or absence of a fill tube, etc. It is believed that Klang '158 does not query the operator regarding such observable characteristics of the battery.

Further, claim 28 includes receiving a query response from the operator related to the observable characteristic of the battery. This is also not shown by the Klang '158 reference.

Claim 28 also includes determining battery type based upon the query response. This also is not shown by the Klang reference.

Finally, the claim 28 includes testing the battery based upon a measurement of a perimeter of the battery along with the query response. This step is also not shown by Klang. For these reasons, along with the claims which depend from claim 28, should be withdrawn.

Applicant notes that the dependent claims include numerous elements which are not shown or suggested by the references. For example, claim 29 includes retrieving the query from a memory and claim 30 states that the memory contains a relationship between a query response and a battery type.

Claims 32-34 describe various battery techniques used to obtain the measured perimeter. In the context of the independent claim, the references also do not show these configurations.

Claim 35 states that the testing is based upon a plurality of query responses. In the context of the independent claim, this also is not shown. In claim 36, various queries are displayed and claim 37 includes selecting a type of battery tests based upon the query response. These configurations are also not shown. Claims 38-45 described a query in terms of various

physical characteristics of the battery. Further, claims 46-55 describe specific types of determined battery types. In the context of the independent claim, these configurations are also not shown or suggested.

In view of the above amendments and remarks, it is believed that the present application is in condition for allowance. Consideration and favorable action are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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